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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 ISOMEDIA.COM, LLC, et al.,

11 Plaintiffs,

12 v.

13 PROSPER, INC., et al.,

14 Defendants.

CASE NO. C08-1733JLR

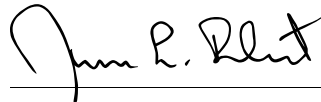
ORDER DISMISSING CASE  
WITHOUT PREJUDICE

15 On September 17, 2010, the court granted Defendant Direct Wines, Inc.'s motion  
16 in limine and held that certain emails that Plaintiffs Isomedia.com, LLC and Isomedia,  
17 Inc. (collectively, "Isomedia") intended to offer into evidence were inadmissible. (*See*  
18 Dkt. # 319.) During the September 17, 2010 hearing, Isomedia conceded that it would be  
19 futile to go to trial on September 20, 2010 if the emails could not be admitted into  
20 evidence. (*See* Sept. 17, 2010 H'rg Tr. (Dkt. # 321) at 33.) Based on Isomedia's  
21 representation, the court struck the September 20, 2010 trial date. (*See id.* at 34.)  
22

1 On September 20, 2010, the court ordered Isomedia to show cause why the action  
2 should not be dismissed without prejudice. (Dkt. # 320.) The court stated in its order  
3 that failure to respond would result in dismissal without prejudice. (*Id.*) Isomedia did  
4 not respond to the show cause order. Defendants Direct Wines and Prosper, Inc.  
5 (“Prosper”), however, filed responses in which they urged the court to dismiss the action  
6 with prejudice. (Dkt. ## 322 (Direct Wines Resp.), 324 (Prosper Resp.)) After  
7 reviewing Defendants’ responses, the court ordered Isomedia to respond to Defendants’  
8 submissions. (Dkt. # 325.) In its response, Isomedia argued that its concession in the  
9 September 17, 2010 hearing should be construed as a motion for voluntary dismissal  
10 without prejudice under Federal Rule of Civil Procedure 41(a)(2), and that dismissal  
11 without prejudice was appropriate because the court did not decide the merits of its  
12 claims. (Dkt. # 326.) Prosper then filed a reply to Isomedia’s response.<sup>1</sup> (Dkt. # 329.)

13 Having considered the submissions of the parties and the relevant law, the court  
14 concludes that dismissal without prejudice is appropriate in this case. Accordingly, the  
15 court DISMISSES the instant action without prejudice. The court DIRECTS the clerk to  
16 enter judgment of dismissal without prejudice in accordance with this order.

17 Dated this 10th day of November, 2010.

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19   
20 JAMES L. ROBART  
21 United States District Judge  
22

<sup>1</sup> The court GRANTS Prosper’s motion for leave to file its reply (Dkt. # 328).